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July 13, 1959
Opinion No. 59-119

REQUESTED BY: Marvin S. Cohen, Chief Civil Deputy
Pima County Attorney

OPINION BY: WADE CHURCH, The Attorney General

QUESTION: May municipalities and counties pay a portion of the cost of group insurance for their employees?

CONCLUSION: Yes, with certain reservations.

The question of group insurance for public employees has been considered by this office in the past.

Opinion 59-96 held the Board of Regents had been granted fairly implied power to pay a portion of the cost of group insurance for its employees.

Opinion 53-31-ESC held Employment Security Commission, under its statutory authority to fix salaries, had the power to expend available funds to pay a portion of the cost of group insurance for its employees.

A contrary opinion to the two foregoing, No. 52-98, held a municipality could not contribute to group insurance without express statutory authority for the reason the state legislature had pre-empted the field of "pension, retirement and related subjects." We believe the law set forth in that opinion to be sound, except that the conclusion reached is too broad in that it extends to group health and accident insurance a "related subject" classification to retirement legislation.

Group insurance is more accurately related to workman's compensation. Group insurance providing coverage outside the scope of workman compensation is a matter upon which the state legislature has not acted either directly or by implication in relation to the Workman's Compensation Act or any of the several retirement acts. Thus group insurance providing benefits not in conflict with workman's compensation benefits is a subject for a local legislation providing counties and municipalities are empowered to enact such legislation.

Dillon on Municipal Corporations, (5th ed.) Vol. 1, Section 237 has this to say with regard to municipal powers:

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation - not simply convenient, but indispensable."

"The legislature is vested with a large discretion in determining what is for the public good and what are public purposes for which public monies can be rightfully expended and that discretion cannot be controlled by the courts except when its action is clearly evasive." Daggett v. Colgan, 92 Cal. 53, 28 P. 51. People v. Standard Accident Insurance Company, et al., 108 P. 2d 933, 926.

July 13, 1959

Page Two

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Sections 9-274 (A) 2; Section 9-239 and Section 11-409 A.R.S. give municipalities and counties specific authority to fix the compensation of employees. Although the matter has not been passed upon in Arizona, the courts of neighboring states have held that expenditures for group insurance premiums are not illegal but constitute expenditures for a public purpose. (See Opinion No. 53-31 ESC)

Municipalities and counties are subject to two general restrictions insofar as expenditures are concerned. The first of these is that the expenditure must be budgeted and the second of these is the constitutional provision in Article IV, Part 2, Section 17, prohibiting the increase or diminishing of compensation of any public officer, other than a justice of the peace, during his term of office.

Our Opinion then that municipalities and counties have implied power to provide group insurance and contribute to the cost thereof for their employees is subject only to the caveat of compliance with the budget laws of the state and the constitutional provision relating to compensation of public officers.

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